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FINLAND

The war between Russia and Sweden culminating in the treaty of Fredrikshamn in 1809 decided the fate of Finland; according to the terms of the treaty Sweden ceded to Russia her Finnish provinces. Article VI of the treaty states, however, that Russia guaranteed Finland her laws and privileges.¹ It is this latter clause, which at the present day is the bone of contention in the Finnish question.

The campaign of the Russian army corps in Finland was very far from being a decisive one; the progress was slow, the resistance of the enemy strong; finally, the Finns started a guerilla war against the Russians, causing the latter very great annoyance.

At the same time the Russian government had many other troubles on hand. The figure of Napoleon loomed high on the horizon of Europe and his shadow began to fall on Russia too, causing the Tsar Alexander I much anxiety.

All this was a strong inducement for Alexander to settle the Finnish question as soon and as peacefully as he could.

All through the year 1808 the Russians pursued a wavering policy; first they would threaten the Finns, then make them certain promises or concessions and so on; thus for example, two important manifestos were issued on March 28 and 31, 1808. In the first one the Russian government declared that thereafter Finland was for all time united with the Russian empire and that the Finns had consequently to take the oath of allegi-

¹ The text of Article VI is as follows: "Sa Majesté l'Empereur de toutes les Russies ayant donné déjà les preuves les plus manifestes de la clémence et de la justice avec lesquelles Sa Majesté a résolu de gouverner les habitants des pays qu'elle vient d'acquérir, en les assurant généreusement et d'un mouvement spontané du libre exercice de leur religion, de leurs droits de propriété et de leurs privilèges," etc.

ance to the Tsar; in the second one the government promised not to levy recruits in Finland and to restore the Finnish army as soon as the oath should be taken. It proved, however, very difficult to force the Finns to take the oath; violent measures were used by the Russians in different places, and yet the majority of Finns literally took to the woods and could not be found.

The entire population was hostile to the invading army and that of course made the position of the commanding generals a very difficult one. They naturally wished for peace and in the autumn months of 1808 a number of armistices were concluded, and a lasting agreement finally reached on November 19, according to the terms of which the Finnish army agreed to withdraw back of the Kemi River.

Then came the unexpected event of the palace revolution in Stockholm. On March 13, 1809, the king of Sweden, Gustavus-Adolphus, was dethroned, the new Swedish government at once accepting Russia's proposals for a peace conference. The latter met at Fredrikshamn; hence the name of the above mentioned treaty, according to which Finland was ceded to Russia.

Meanwhile since the winter of 1808-1809 the Russians considered themselves the conquerors of Finland.

The upper classes of the Finns, the nobility, gentry and clergy, clearly saw the profits they could reap from a union with Russia, and hoped for much more independence than they formerly had under Swedish rule; only the lower classes, especially the peasantry, were opposed to the Russians. Many members of the Finnish aristocracy had come into personal contact with the Russian emperor and had been charmed by his fascinating personality; for Alexander well knew how to make himself agreeable and easily won many devoted friends. Moreover, his acts were consciously directed to capturing the confidence of the Finns. In the summer of 1808 he called a deputation to St. Petersburg, to discuss the settlement of Finnish affairs. An imperial manifesto was issued urging the people to elect such a "deputation." This order was duly obeyed; the Finns, however, foresaw one danger, viz., that the Russian government would consider the members of this deputation representatives of the people

and in the future might refuse to convene the Finnish diet, or Finnish estates, and merely continue to summon similar deputations to St. Petersburg. Hearing rumors of these fears, Alexander immediately sent assurances to the Finns that he had no such intention. The deputation consequently went to the Russian capital at the end of the year (1808); its main object being to defend the maintenance of the existing laws and privileges of Finland, and to arrange a settlement of the various questions which had arisen in consequence of the war.

On the first of December Alexander appointed General Sprengporten governor-general of Finland; this fact is of importance to us, as showing that Russia then looked upon Finland as a conquered province. She had the right of doing so from a military point of view; part of the Swedish army had been defeated, and the remainder driven into the far north. Consequently the greater part of the Finnish territory was under Russian military occupation, though a guerilla war was still going on in some places.

Now came the decisive act of the Russian government; the new governor-general submitted to the tsar a report, concerning the administrative organization of the newly conquered provinces; the most important question mentioned in this report being the summoning of "an assembly which should be composed of representatives of all the classes of the population." According to Alexander's personal wish, the Finnish affairs were to be reported to him directly by a "secretary of state for Finland" and not through any Russian office. From the very beginning two main points were thus established, with the sanction of the tsar: 1. Finland was to have a legislative representative assembly, distinct from the legislative organs of the Russian Empire. 2. All Finnish affairs were to be conducted exclusively by Finnish officials, Finland thus receiving a separate administration; the secretary of state had merely the duty of submitting reports and possessed no executive or administrative power, being simply the official channel of communication between the tsar and the Finnish government.

The diet or landtag was summoned by an imperial order to

convene on March 22, 1809, at the town of Borgo. It was to consist of four "estates" or chambers, the nobility, the clergy, the burgesses and the peasants.¹ Alexander went himself to Borgo to be present at the opening ceremonies. On the twenty-eighth the governor-general read the tsar's speech from the throne. Alexander promised to recognize the Finnish constitution and laws, saying: "The present assembly, as proof of my promise, will be the beginning of your political existence." The diet then took the oath of allegiance and officially recognized Alexander as the "grand duke of Finland."

The first secretary of state for Finland was Speranski. This is a very important fact to note, considering Speranski's influence on Alexander at this time. He was the greatest statesman Russia had in the nineteenth century, and in 1809 the staunchest supporter of liberal and even constitutional ideas; and much of what Finland received from Alexander I was due to this man. As secretary of state for Finland in reporting the Finnish affairs to the tsar he had a good chance of influencing the latter.

Alexander very willingly agreed to all the liberal measures concerning Finland and many times spoke openly of the Finnish constitution, a fact of great importance for the whole future of the country. The tsar was glad to be able at last to do something toward the realization of the constitutional dreams of his youth; in Russia proper many circumstances militated against the realization of liberal reforms and thus frustrated all his efforts. In Finland, on the contrary, such obstacles did not exist; the country had its old laws and privileges, and was a stranger to the Slavic world so that no Russian interests could be affected by the independent administration of Finland. There existed hardly any trade between the two countries, scarcely any Russians lived in Finland, and the official and court circles of St. Petersburg did not care in the least about what was going on there. All this made Alexander feel that his hands were free; he thought he thus had an opportunity of giving the Finns, and the outer world as well, a proof of his liberalism by

¹Similar to the mediæval German diets.

sanctioning a constitution. The ovations and sympathetic reception he received in Finland helped to strengthen these feelings and finally led to his public recognition of Finland as a state.

But Alexander had also other considerations in mind. These were strategic ones; he wanted to make good friends with Finland so as to have his rear safe in case of military complications in the west for it would have been most dangerous for Russia to have a foe so near the capital, the Finnish border being only some 25 miles distant from St. Petersburg. In 1809 such complications on the western frontier seemed quite probable. Here the tsar showed himself a very far-sighted statesman, his Finnish policy guaranteeing Russia good friends and even allies, where before she had only enemies. For the ninety years that Russia honestly kept to her pledge of not interfering with the Finnish constitution, she had good and sincere friends in Finland.

The constitution of Finland is based on two different acts, which do not coincide in time; one was the sanction at Borgo of the laws regulating the inner administration and consequently the relations of Finland to Russia; the second, embodied in the treaty of Fredrikshamn, regulates Finland's position from the point of view of international law, viz., its position among other European nations.¹ This is not the only example of a case where two such acts do not coincide in time; on the contrary it very often happens that the international status of a conquered province is decided at a different time from that of its inner status or administration. An example of such a case is Alsace-Lorraine, conquered by Germany in 1871; its international status being defined on February 26 and its inner status and its relations to the German empire not until June 9.

According to the first act (that of Borgo) Finland was granted a constitution; here we have two important points to emphasize: first, that the constitution was *granted*; second, that it was a *constitution*. The act was not a bilateral contract; the latter theory is now entirely abandoned; it was a solemn promise of the

¹An international agreement concerning a territory does not establish the inner administration or public law status of such a territory.

Russian tsar-grand duke, by which he bound himself and his successors to uphold the Finnish constitution. Previous to the grant Alexander's will was free and unbound; but the moment the grant was consummated by his promise and signature, he became bound by the constitution. This meant two things: 1. The restriction henceforth of the monarch's powers concerning the Finnish people. 2. The legal fact that, in Finland, only such measures could be considered law as were passed by the Finnish diet and sanctioned by the Finnish monarch, the grand duke. This is now the *communis opinio doctorum*. Alexander did not create at Borgo an entirely new constitution, but sanctioned the already existing Swedish laws, which henceforth were to be the Finnish constitution; these laws were the so-called 'Form of Government' of 1772 (see especially secs. 2 and 5) and the "Act of Union and Security" of 1789 (see especially sec. 2).

The two above mentioned points are of the greatest possible importance as it is against them that the present policy of the Russian government is directed.

Thus the tsar, since 1809, represented a double juridical person, as emperor of Russia and grand duke of Finland.¹ During the nineteenth century this was the more important on account of the very different status of these two personalities; on the one hand we have an autocratic power, that of the Russian monarch, legally not limited; on the other, a constitutional or limited monarch, the grand duke.² All through the nineteenth century this distinction was strictly maintained in governmental practice, as well as in law. It was only as late as 1899 that it came to be disputed by the Russian government. At this time

The oath of ascension to the throne of the Tsars mentioned separately the "throne of Finland;" thus corresponding to the two juridical persons there might be asserted two thrones, the Russian and the Finnish; the author however thinks that in this case it is only a question of a double title.

² Russian reactionaries later on raised the objection, that Alexander, being an autocrat, could not restrict his own power and always remained an autocrat for Finland as well as for Russia. This objection, however, hardly needs discussion; it really comes to a negation of any grant of a constitution and could be directed against the modern Russian constitution of 1905 just as well. Needless to say the

the question arose as to the guarantees of the Finnish constitution; where were they and what were they? The danger of the second, autocratic, personality overshadowing the limited monarch of Finland became very evident. There existed but one guarantee, and this was—the monarch's promise. Alexander was bound by his acts at Borgo; his successors by their oaths of accession to the throne, according to which each one of them promised solemnly to comply with the existing Finnish laws and privileges, viz., the constitution.¹

The limitation of the monarch's power is an essential part of the constitution of Finland, as it is of almost all other constitutions. Another essential part is the exclusion of the Russian government from participation in most cases, though not without exception, in the affairs of Finland. The international status of Finland as well as the fact of union with Russia, create for the latter country some fields of action in Finland; in other words there exist and always have existed certain legal questions which fall within the competence of the Russian and not the Finnish state. These are: 1. The laws of succession to the Russian throne, Finland has nothing to do with; the order of succession, the laws concerning the imperial family, regencies, the coming of age of the heir, etc.,— all being questions regulated exclusively by Russian laws.² 2. The international relations, including the treaty-making power as well as the power of war and peace; all the foreign relations of Finland are in the hands of Russia; it is the latter country alone, that represents Finnish interests abroad; Russia is free to conclude any treaty or make any arrangement she chooses concerning Finland

history of the nineteenth century stands in flagrant contradiction with that theory. We know of many instances where constitutions have been granted which have restricted the monarchical power very effectively. From the moral point of view this theory is most defective, as it amounts to a negation of the sanctity of the monarch's word.

¹ The text of the tsars' oath will be found in the book of J. R. Fisher, *Finland and the Tsars*, p. 39 et seq.

² A similar example can be found in the German empire which has no laws of its own concerning the succession to the German throne; it is the Prussian laws that regulate these questions; the federal laws simply refer the matter to the latter.

without considering the opinion of the Finnish people. This certainly is a great menace to the Finns. The Canadian principle seems much more just, as it gives Canada a voice in international affairs, which concern her interests. 3. The position of the foreign consuls in Finland is also regulated by Russian law. 4. The Russian army, quartered for Russia's defence in Finland, remains under the jurisdiction of Russian law and under the direction of the Russian ministry of war; the same applies to the navy. 5. Finally, Russia has some institutions in Finland which are also subject to Russian law. These institutions are: *a.* The Russian orthodox church. *b.* The Russian schools located in Finland. *c.* The office of the Russian treasury, kept in Finland in order to finance the Russian institutions, as well as the army and navy. *d.* The telegraph and postal services.

These are the only cases where Russian laws can be applied in Finland, according to the constitution of the latter country. In all other cases only Finnish laws are valid in Finland. This certainly means an important restriction for Russia, affecting the powers of her government, as well as those of the tsar. It is just this point that has proved so serious a bone of contention of late years. The Russians are no longer willing to allow such a restriction of their powers. Their contention is, that the development that has taken place in the mutual relation of Finland and Russia, since Alexander's reign, proves conclusively that Russian interests need a better protection in Finland and, hence, that Russia ought to have much wider powers there. The reactionaries go so far as to say that Russia ought to have a free hand in Finland and should not even consider the local laws; this latter theory, however, is purely and simply a negation of all legal order and a defence of arbitrary government.

That the interests of the Russian empire do at the present day necessitate a widening of Russia's powers in Finland may be the case; and in the author's opinion such is the case. Time can alter very much the legal relations of two peoples; the status created by Alexander in the beginning of the nineteenth century no longer corresponds to the requirements of the twentieth century.

This, however, cannot in any way affect the Finnish constitu-

tion; if a change is necessary, it can be legally enacted only in a constitutional way. The Finnish constitution states clearly that no law can be enacted, which is not passed by the Finnish diet; thus if the Russian government believes that new laws should be created, which would give Russia wider powers in Finland, it should ask the diet to pass the law and give it the necessary powers. The Russian government, on the contrary, considers that since such Russian interests do exist, it can protect them in spite of, and in opposition to, the existing Finnish laws. The government recently pushed through the Russian duma and council of empire a law concerning Finland, without consulting the Finnish representative assembly. This is a serious breach of Finland's constitution, but at the same time a much more serious breach of the Russian constitution as well, as the Russian laws do not empower the Russian government to take any such steps. The danger lies in the future; a constitutional breach is always a very dangerous precedent as it is sure to undermine the moral authority of the body that commits the breach. The same principle might at any time be applied to the Russian duma itself and legislation might be passed over its head.

The question of real importance for Russia and the one in which Russian interests are really at stake is that of military defence. The empire must have the possibility of defending itself from its enemies. From a strategical point of view Finland might prove very important, consequently, Russia has to have there a number of fortifications, defended harbors, etc., and also is obliged to maintain a strong army corps. The Finns have never objected to this and practically the Russian government has always had a free hand in this question.

More difficult is the solution of another question—the question concerning the military service of the Finns. The Russian argument is that as Russia protects Finland, the latter country must share in the military burden of the empire. The Finns answer that they have always agreed to this, and that formerly, when they had their own army, they willingly helped Russia, giving as example the valiant deeds of the Finnish battalions in

the Turkish war of 1877-1878. They maintain only that the Finnish regiments must first of all be used to protect Finland proper; an argument that is hardly to be disputed. But the Russian government was so much afraid of the Finnish troops that it abolished them toward the end of the nineteenth century, sending to Finland a Russian army corps. At the present day the Russian government contends that as Finland does not send her young men to serve in the army, the Finns must pay a yearly contribution instead. A very serious conflict arose between the two countries over this question, and the dispute has not yet been settled.

In Finland the legislative power is in the hands of the diet and the grand duke; the former discusses the laws to be enacted, the latter sanctions them. Their coöperation is thus absolutely necessary; and the sanction of the grand duke is not merely a veto-power; it is much more than that, being an essential part of the law-making power.

Formerly the diet was composed of four chambers or "estates": the nobility, the clergy, the burgesses and the peasants. In 1906 a new organic law was enacted, creating a single chamber of 200 members elected by universal manhood and womanhood suffrage. It is this body that at the present day legislates for Finland.

Much more complicated is the matter of the organization of the executive power. As in any other monarchical country it is the monarch of Finland that is the real head of the executive. He exercises his power either personally, making his will known through the secretary of state for Finland (now called "minister-state-secretary for Finland"), or by delegating it to the Finnish administration. The latter is conducted by the governor-general in council. The council bears the rather puzzling name of senate. It has two "departments"; one is the judicial department, a sort of high court of Finland; the other is the real ministry. The governor-general is the president *ex-officio* of the senate; each of the departments has its own vice-president; the judicial department constitutes a single body, whereas the other branch, called the "economic"-department, has seven sections, called "expeditions," representing seven ministries.

The council began its work in 1809, and in 1816 it received the official name of "imperial senate of Finland."

One of its most important functions is the publication of laws, for no law can be applied by the courts or by the administration unless published by the Senate.

The minister-state-secretary must reside wherever the tsar makes his residence; now it is always in St. Petersburg; his chief function is to act as the channel of communication between Finland and Russia. In 1809 a special committee was established consisting of Russian officials, which had to consider all matters regarding the mutual relations of Finland and Russia. In 1811 this committee was changed into a special Finnish office, with Finnish citizens as members, presided over by the secretary of state for Finland. Its duty was, as before, to consider the measures and laws of common interest to the two countries. Later on it was abolished; the state-secretary being obliged to communicate to the Russian ministers all measures and laws which could affect Russia. For a very long time he remained the only channel of communication between Finland and Russia; it was through him for example, that the governor-general or the senate communicated with the tsar or the Russian government. This method of procedure is considered by the Finns the only legal one; the Russian government, on the other hand, now contends that it does not guarantee Russia a sufficient protection of her interests and that all measures and all laws, without exception, should be communicated to the Russian ministers, who may then decide whether the projected laws or measures concern Russia or not; in the former case they may advise the emperor to pass, amend or veto the law according to the interests of Russia; in the latter case they may leave the matter to the minister for Finland who would report it to the tsar-grand duke. It is small wonder that the Finns have energetically protested against this new order of things, enacted in June, 1908.¹ In the first place the measure is certainly illegal, as it does not correspond to the existing Finnish laws, accord-

¹ Details concerning the act of June 2, 1908, can be found in the pamphlet of Th Kokoshkine, *Le Conseil des Ministres de Russie et les affaires Finlandaises*, 1909.

ing to which the Finnish minister is the only channel of direct communication with the monarch; secondly, it gives the Russian ministers far-reaching powers, which create a serious impediment to Finnish autonomy and independence. The political events of the last years show clearly that the Russian government intends by this means to annihilate Finland's independence. In every question that has been discussed during these last two years, the Russian government has attempted to interfere under the pretext of deciding whether or not Russian interests are involved. Consequently the council of Russian ministers has now become a body superior to the Finnish senate.

The third power, the judicial, is in the hands of the Finnish courts. There exist a number of lower courts throughout the country, the larger cities having their own municipal courts; then there are three courts of appeal at Abo, Viborg and Vasa, and the high court, which is the judicial department of the senate.

The most important drawback of this system is the organization of the senate; the senators are all appointed by the tsar and hold their places subject to his approval. Consequently they do not have the necessary independence. The appointments are almost purely political, which is very pernicious for a high court. Then also, the judicial department has certain executive duties. This is in contradiction to the theory of separation of the judiciary and the executive, one of the fundamental principles of modern public law. Public opinion is clamoring for the reform of this high court; it ought to be separated from the rest of the senate, transformed into a really independent high court and freed from all executive business.

Considering the organization of the executive power, it must be admitted that there cannot be any question of the existence of a personal union between Russia and Finland. The union is a much closer one and of a more complicated character. But neither can it be classed under the head of the German theory of Real-Union,¹ for one of the main requisites of a real union is the legal equality of both parts of the union, whereas Finland was

¹This latter theory had some defendants in the nineteenth century.

never the equal of Russia, but always a subordinate commonwealth.

Thus we are reduced to three other possibilities: Finland may be regarded either as a non-sovereign state¹ or a "state-fragment" (the theory of Prof. G. Jellinek); or, finally, as having the position Canada has in the British empire. The last seems to be the most exact analogy, for though Canada has far wider powers and privileges than Finland ever had,—theoretically, their position is very much alike. Under normal conditions Finland would have developed her autonomy just as Canada did, loyally supporting the empire and its sovereign.

The policy pursued by Russia has been, however, a very serious impediment to such a normal development. Already toward the end of Alexander's reign the executive power began slowly to drift into the hands of the governor-general. In the reign of Nicholas I this process developed much more rapidly. General Zakrefski, then governor-general of Finland, lost no chance of increasing his own power to the detriment of the senate. At this period of Finland's history there was no question of summoning the Finnish diet; the whole administration was concentrated in the hands of the governor-general; theoretically, however, the Emperor Nicholas still kept to Alexander's idea of Finland's autonomy, notwithstanding his autocratic régime. We have many facts proving that Nicholas held this view, and did not consider Finland a province of Russia, but an autonomous state.² His successor, Alexander II, on the other hand gave the Finns new proofs of their independence; he summoned the diet several times and in one case, September, 1863, gave solemn assurances to Finland of his wish to respect the Finnish constitution.

It was during this reign that new statutes were issued concerning the Finnish diet (1869), a law passed giving Finland

¹ Professor Ullman, for example, and the Finnish Professor R. Hermanson defined Finland as a subordinate state.

² An important fact is to be noted here; not summoning the diet and increasing the powers of the governor-general, Nicholas never violated the constitution of Finland, only those laws were considered as having force in Finland, which were passed by Finnish organs.

its own separate monetary system and another law giving the country its own military organization (the Finnish battalions existed up to the end of the nineteenth century; the monetary system still exists at the present day, 1910).

The fact that the diet was not convened from 1809 to 1863 was certainly not in strict keeping with the spirit of the constitution, but it implied no violation of it, as the monarch was not obliged to summon the representatives unless he wanted to enact new laws, or levy new taxes, which he could not and did not do without the coöperation of the diet. The existing legislation was quite sufficient for the needs of the time, the minor changes being effected by administrative orders of the crown. The monarchs were very careful to avoid any clash between such administrative orders and the existing laws, which is one more proof of their feeling of respect for the constitution. After all, this was not a difficult task for the crown, as the latter's powers according to the Finnish laws are very wide.

Beginning with 1863 the diet was convened more or less regularly every four years and duly legislated for the country. This state of things prevailed under both Alexander II and Alexander III, who many times expressed their intention of upholding the constitution.

To summarize briefly the position of Finland from the point of view of public law, we must note that the country possesses separate fundamental laws (*Verfassung* or constitution), which cannot be legally altered otherwise than with the assent of the Finnish people; further, the inner status of the country or the constitution, is based on the solemn promise of the Emperor Alexander I, given at Borgo in 1809; all his successors have repeated this promise in their oath of accession to the throne; this is also stated in Article VI of the Fredrikshamn treaty, though this article has no binding force, but is merely a declaration of fact;¹ the international status of Finland is however established

¹ Sir E. Fry very well defined this point in saying that "the treaty of Fredrikshamn recognizes the existence of the previous transaction between the czar and the people of Finland and that as *res inter alios acta* this could in no case rescind the solemn contract of Borgo."

by Article IV of the Fredrikshamn treaty. From the point of view of international law Finland is only a part of the Russian empire.

Further, the legislation concerning the succession to the throne, the regency, the imperial family, and similar questions, depends exclusively on Russian law, as do also all questions concerning international relations, the treaty-making power, the conclusion of peace or declaration of war, alliances, etc.; thirdly, Russia has in Finland some institutions, as well as an army and a navy, all of which are under the Russian laws. All other legislative, judicial and administrative matters are to be dealt with exclusively by Finnish laws. No laws are legally binding in Finland but those enacted in the manner prescribed by the fundamental laws; the only exceptions are the above mentioned cases.

From a theoretical point of view the position of Finland in relation to Russia may be defined, either according to the German theory of non- or semi-sovereign dependent states, applied to so many cases at the present day (Professor Jellinek's "Staatsfragment" would be the best definition), or compared to the English theory of "dominion," which theory fits the case much more closely. Finland, like Canada or New Zealand, has more the character of a state than a Swiss canton or a modern state of the North American union.

The theories of public law of the nineteenth century, which still form the basis of our judicial ideas, no longer correspond to the political, social and economic development of the peoples of the twentieth century. Finland offers a striking example of this.